IN THE HIGH COURT OF BOMBAY AT GOA.

WRIT PETITION NO. 332 OF 2001.

Mumbai Mazdoor Sabha, formerly known as (Kamgar Sabha), a Trade Union registered under Trade Unions Act and having its office at Kennedy House, 4th Floor, Goregaonkar Road, Bombay-400 007. ... Petitioner.

Versus

1. M/s. Syngenta India Ltd., a company incorporated under the Companies Act and having its plant at Santa Monica, Corlim, Ilhas, Goa.
2. M/s. Ciba Speciality Chemicals India Ltd., a Company incorporated under the Companies Act and having its Plant at Santa Monica, Corlim, Ilhas, Goa.
3. Kamgarancho Ekvott, a Trade Union registered under the Trade Union Act, 1926 and having its office at Panaji, Goa. ... Respondents.

Mr. C.U. Singh with Mr. V. Menezes, Advocates for the Petitioner.

Mr. S.D. Padiyar, Advocate for the Respondent No. 1.

Mr. G. Sardessai with Mr. S.G. Bhobe, Advocates for the Respondent No. 2.

Mr. S.G. Dessai, Senior Advocate with Mr. D. Pangam, Advocate for the Respondent No. 3.

Coram: P.V. HARDAS, J.

Date: 26th April 2002.

The petitioner, a trade union registered under the Trade Union Act, has filed the present petition taking exception to the Order passed by the Presiding Officer, Industrial Tribunal, Panaji, Goa, dated 30th November 2000, in Reference No. IT/38/95, alongwith the applications at Exhibits 37 and 40 filed

by the respondent no. 3 for joining the respondent no. 3 as party to the reference.

2. The brief facts necessary for the decision of this Writ Petition are stated hereunder:-

3. The Government of Goa by Orders dated 23rd August 1995, 5th September 1995 and 17th January 1996 referred the dispute regarding the demands of the workmen for adjudication by the Industrial Tribunal. The workmen/party no. 1, the present petitioner filed its statement of claim in support of the demands and the employer/party no. 2, the present respondent no. 2 and M/s. Novartis India Limited, which was renamed as M/s. Syngenta India Limited, that is, the present respondent no. 1, filed their written statement objecting to the demands of the workmen. The Industrial Tribunal, Panaji, Goa, on the basis of the pleadings of the parties framed issues. The petitioner led evidence in support of its statement of claim and while the evidence of respondents 1 and 2 was being recorded, the respondent no. 3 filed an application dated 11th September 2000, Exhibit 37, praying that it be joined as a party to the above dispute. The respondent no. 3 thereafter filed another application, dated 29th September 2000, Exhibit 40, praying for the same relief. According to the respondent no. 3, the filing of

Exhibit 40 was necessitated because of subsequent events, namely, that the employees of Novartis India Limited had resigned from the petitioner union and had become members of the respondent no. 3 union.

4. The application at Exhibit 37, filed by the respondent no. 3, referred to the fact that out of the total workmen strength of 71 of the respondent no. 2 company, 68 were the members of the respondent no. 3 union and only 3 workmen continued to be the members of the petitioner union. At paragraph 10 of the said application at Exhibit 37, it was contended by the respondent no. 3 that the respondent no. 3 represents overwhelming majority of workmen of respondent no. 2 company and, hence, it was entitled to represent them in the dispute pending before the Industrial Tribunal. It was also stated in the said application that the petitioner union was not entitled to represent the workmen (who had joined the respondent no. 3 union) in the dispute pending for adjudication before the Industrial Tribunal. Subsequently another application dated 29th September 2000, Exhibit 40, came to be filed alleging therein that subsequent to the filing of the application at Exhibit 37, some employees of Novartis India Limited (which has been subsequently named as M/s. Syngenta India Limited/respondent no. 1) have joined the respondent no. 3 union. In the application it was

pointed out that out of the total workmen strength of 310, 106 workmen, who were members of the petitioner union, have resigned and have joined the respondent no. 3 union. It was further contended in the application that 47 other workmen, who were not members of the petitioner union, had become members of the respondent no. 3 union. Thus, it was submitted in the said application, that out of the total workmen strength of 310, the respondent no. 3 union was representing 203 workmen. At paragraph 6 it was further stated that the respondent no. 3 union had entered into a settlement with M/s Novartis India Limited on the charter of demands and the members of the respondent no. 3 union had signed the settlement. At paragraph 8 it was contended that since the respondent no. 3 represents an overwhelming majority of workmen of respondents 1 and 2 companies, it was entitled to represent their interest in the dispute pending for adjudication before the Industrial Tribunal.

5. The petitioner union filed its reply to the application filed by the respondent no. 3 at Exhibits 37 and 40. In the reply one of the grounds that was raised was that the Tribunal did not have the necessary jurisdiction for impleading the respondent no. 3 as a party in the present dispute. It was also stated in the reply that the respondent no. 3 union was neither a

necessary nor a proper party to the dispute. At paragraph 7 it was stated that in view of the settlement between the respondent no. 3 union and the employers, no dispute existed which required adjudication.

6. The respondent no. 2 filed its reply to the aforesaid applications filed by respondent no. 3. In the said reply it was submitted that at the initiative of the workmen and the respondent no. 3 union and on being satisfied that an overwhelming majority of the workmen of the company had resigned from the membership of the petitioner union, the respondents commenced negotiations/discussions on the charter of demands served by the petitioner union. At paragraph 6 it was stated that ultimately as a result of discussions, the management and the union came to an amicable settlement on 30th August 2000 and the settlement has been registered under Section 2(p) of the Industrial Disputes Act, 1947. It was also sated that 68 out of the 71 workmen of the respondent no. 2 company had accepted the terms and conditions of the settlement as a package deal in full and final settlement of all demands including those pending in the reference. At paragraph 7 the respondent no. 2 supported the claim of the respondent no. 3 for being joined as a party.

7. The members of the petitioner union, who had

resigned from its membership and had joined the respondent no. 3 union had also entered into a settlement with M/s. Novartis India Limited on 26th September 2000. Thus, the workmen who were members of the respondent no. 3 union had entered into a full and final settlement with the respondents 1 and 2 with respect to the demands made in the charter of demands by the petitioner union.

8. The learned Presiding Officer, Industrial Tribunal, Panaji, Goa, by his Order dated 30th November 2000 allowed the applications at Exhibits 37 and 40 filed by the respondent no. 3 union on the ground that the respondent no. 3 union was a necessary party. The learned Presiding Officer of the Industrial Tribunal distinguished the Judgment of the Bombay High Court in the case of **The V.V.F. Employees' Union v. S.M. Limaye and others**, 1990 (1) CLR 359 on the ground that in the aforesaid decided case there appeared to be two charter of demands whereas in the present dispute, which was pending before the Industrial Tribunal, there was only one charter of demands.

9. The short question which arises for determination in the present petition is whether the workmen, who are represented by respondent no. 3 union, who have settled their dispute, are necessary parties?

10. I have heard Mr. Singh with Mr. Menezes, learned counsel appearing for the petitioner, Mr. Padiyar, learned counsel appearing for respondent no. 1, Mr. Sardessai, learned counsel appearing for respondent no. 2 and Mr. Dessai, learned senior counsel appearing for respondent no. 3.

11. Mr. Singh, the learned counsel appearing for the petitioner, has heavily relied on the Judgment of the learned Single Judge of this Court in The V.V.F. Employees' Union (supra). Reliance is specially placed on paragraphs 9 and 10 of the aforesaid Judgment, which are as under:-

> "9. The argument is not wholly correct. The dispute is between the parties. The workmen who have made the demands and the employer who refused to concede the said demands are parties to the dispute. Undoubtedly, the demands had been made upon the company. The said demands were taken up in conciliation. The workmen represented by the petitioner union settled their dispute in respect of the demands entered by the settlement and entered into a settlement. It is thus clear that in so far as the workmen represented by the petitioner union are concerned, their dispute ceased to exist. That dispute was not referred to the Industrial Tribunal for adjudication.
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> 10. On the other hand, the demands raised by the respondent union did not result in a settlement. The dispute persisted. Conciliation proceedings failed. Hence the reference was made. Therefore, to

> the dispute in the present reference, the respondent union and the members of the said union on the one hand and the company on the other are the parties. The petitioner union is not a party. This is the view which the Industrial Tribunal has taken and I do not find any error of law in this view of the Tribunal. If there are any workmen who are not members of either union, they can naturally appear before the Tribunal pursuant to the notice given of the adjudication proceedings, but the petitioner union representing its members having settled the dispute with the employer and the said dispute not having been referred to the Tribunal for adjudication cannot legitimately claim to be a party to the dispute."

12. Mr. Singh, the learned counsel appearing for the petitioner also placed reliance on the Judgment of the learned Single Judge of this Court in **ICI Ltd. v. N.A. Kadam & Others,** 1993 (1) CLR 378. Reliance is placed on paragraphs 23, 30 and 31 of the aforesaid Judgment, which read as under:-

> "23. Where the workmen of an Industrial Establishment are represented by more than one union, the employer entering into a settlement with one of the unions gives rise to a somewhat complex situation. Those that are parties to the settlement through the union of which they are members, are not free to agitate the issues settled. As regards that there is no industrial dispute. As to other, there being no bar, there can be an industrial dispute raised by such workmen with regard to their conditions of service, notwithstanding the settlement. The above being the legal position, the reliance placed by the petitioner on the judgment of the Supreme Court in Tata Chemicals

is not of much avail.

30. As pointed out earlier, the purpose in entering into a settlement binding under the provisions of Section 18, under sub-sections (1) or (3) is to ensure that the industrial dispute is put to rest. Obviously, when a settlement is signed during the conciliation proceedings, by virtue of sub-section (3) of Section 18 of the Act, all the workmen in the concerned industrial establishment would be bound thereby and the industrial dispute with regard to subject-matters covered by the settlement would have ended. similarly, if there is a settlement de hors conciliation proceedings, by virtue of sub-section (1) of Section 18 of the Act, the settlement puts to rest the industrial disputes with regard to its subject-matters, as far as the member-workmen of the signatory union are concerned. In either situation, industrial dispute having ended, that could neither be a valid reference under Section 10, nor could there be any further adjudication of the matters which are the subjects of a valid, binding settlement, as reference made in either situation is assailed on the ground that what is referred is not an industrial dispute, on the principles laid down in the judgments in Avon Service (supra) and Shambu Nath (supra).

31. In a situation covered by sub-section (1) of Section 18 of the Act, it is only the workmen who are members of the union signing the settlement who would be bound by the terms of the settlement during its operative period. If in the concerned industrial establishment there are workmen who are not members of such a union, whether they are members of any other union or not, the settlement would not bind them. With regard to the industrial matters which form the subject-matter of such a settlement, such workmen would be free to raise an industrial dispute and such industrial dispute, if

raised, could be validly referred for adjudication and adjudicated upon. When such an industrial dispute is raised and referred for adjudication, the Tribunal would be required to adjudicate such dispute on the basis of the well-known principles of industrial adjudication. The fact that a majority of the workmen is party to the settlement would be a material and relevant factor to be considered by the Industrial Tribunal. As the existence of the settlement on the same subject-matter would not bar the reference vis-a-vis workmen who are not parties to the settlement, the jurisdiction of the Industrial Tribunal in such a reference would be of the widest amplitude. It would be open to the Industrial Tribunal, notwithstanding the settlement, to adjudicate the demands and grant reliefs which may be even higher than the reliefs obtainable under the settlement. If the Industrial Tribunal is satisfied that the terms of the settlement are fair, reasonable and justified, that the settlement is not tainted with any vitiating factor and that the imposition of the terms of the settlement upon the entire body of workmen in the industrial establishment would be a fair and just resolution of the industrial dispute, the Tribunal has jurisdiction to make an award extending the terms of the settlement to all workmen in the industrial establishment, regardless of their union affiliation, which terms of the settlement are fair and need to be extended to the entire body of workmen, and which need not be, are matters within the judicial discretion of the Tribunal. Thus, a fortiorari, if the Tribunal adjudicating the dispute could grant benefits to the workmen even higher than those under the settlement. There is no reason why the Tribunal cannot grant to them some part of the benefits flowing from the settlement itself. Similarly, it would be fully open to the Tribunal to incorporate into its award the beneficial terms

> of such a settlement without imposing the obligatory or restrictive covenants contained therein."

13. Mr. Dessai, the learned senior advocate appearing for respondent no. 3 has urged before me that the respondent no. 3 represents an overwhelming majority of the workmen of respondents 1 and 2 companies. Though there was a settlement of dispute between the members of the respondent no. 3 union and the respondents 1 and 2 companies, the dispute still exists and was pending for adjudication before the Industrial Tribunal and, therefore, it cannot be said that the respondent no. 3 union was not a necessary party. According to him, there cannot be a curtailment of the right of the respondent no. 3 to participate in the proceedings. It was next urged by Mr. Dessai that the scope of interference either under Article 226 or 227 in respect of the discretionary Order of the Industrial Tribunal is extremely limited. The Industrial Tribunal has exercised its jurisdiction to advance the cause of justice and this Court, therefore, would not interfere in its extra-ordinary jurisdiction under Article 226 or 227 of the Constitution of India. Moreover, it is submitted that no prejudice would be caused to the petitioner union if the respondent no. 3 is allowed to participate in the proceedings. Lastly it is submitted by Mr. Dessai that unless the dispute is adjudicated and an Award is passed, it cannot be said that the dispute has come to an end. Mr. Sardessai and

Mr. Padiyar, the learned counsel appearing for respondents 2 and 1 respectively have adopted the arguments of Mr. Dessai. Mr. Sardessai has submitted that it is inconceivable that the authors of the settlement, that is, the respondent no. 3, should not be allowed to come before the Court to defend the settlement.

14. On the basis of the charter of demands submitted by the petitioner union a reference was made by the Government to the Industrial Tribunal for adjudication of the industrial dispute. Meanwhile the workmen who were members of the petitioner union joined the respondent no. 3 union and a settlement was signed between the respondent no. 3 union and the respondents 1 and 2 companies. The settlement was in respect of the same charter of demands which had been submitted by the petitioner union. The workmen who were parties to the settlement of their disputes are not free to agitate the issues which have been settled. An industrial dispute would exist only if demands are made by the employees and are refused by the employers. If there is a settlement of demands, an industrial dispute cannot be said to be existing. As far as those workmen who have not entered into a settlement are concerned, an industrial dispute can be said to exist and they are free to agitate their demands. The settlement of

disputes which have been arrived at by respondent no. 3 with respondents 1 and 2 companies would certainly be taken into consideration by the Industrial Tribunal while adjudicating upon the dispute raised by the petitioner union herein. Undoubtedly, the petitioner union is reduced to a minority in the sense that majority of its workmen have joined the respondent no. 3 and have settled their disputes. However, six of the workmen who continued to be the members of the petitioner union would be free to agitate their demands. It was rightly submitted by Mr. Singh, the learned counsel appearing for the petitioner, that while adjudicating the dispute, the Court may hold the settlement to be fair, just and proper and may pass award in terms of the settlement arrived at by the respondent no. 3 union with the respondents 1 and 2 companies or the Industrial Tribunal may grant the petitioner union more benefits than what is settled between the parties. However, that is a matter which will be dealt with by the learned Presiding Officer of the Industrial Tribunal after the evidence of the parties is adduced in the proceedings. One thing is clear that those of the workmen who have settled their disputes are not necessary parties to the proceedings as inbetween them and the employer as no industrial dispute exists. Not a single workman of the respondent no. 3 union has approached the Court to complain regarding the

settlement being either unjust or unfair. In such a situation may be the concerned workman would be a necessary party. By no stretch of imagination can it be said that the respondent no. 3 union was a necessary party for the settlement of the dispute since, according to me, in view of the settlement arrived at no industrial dispute exists and the workmen whose disputes have been settled cannot agitate or cannot have any grievance in respect of the disputes which are raised by the workmen who have not entered into a settlement. It is true that the Industrial Tribunal would be called upon to decide whether the settlement arrived at between the respondent no. 3 union and the respondents 1 and 2 companies is a just, fair and proper settlement of the dispute. The employers, parties to the reference would have to establish before the Industrial Tribunal that the settlement is just, fair and proper. The workmen who have entered into a settlement, may be examined as witnesses by the employers, in its attempt to establish that the settlement is just, fair and proper. Unless the workmen take exception to the settlement and complain to the Industrial Tribunal that the settlement is unjust, unfair or improper, the workmen are not necessary parties to decide whether the settlement is just, fair and proper. The ratio of the Judgment of the learned Single Judge in The V.V.F. Employees' Union (supra) applies with full force and the learned

Presiding Officer of the Industrial Tribunal has erred in distinguishing the Judgment on the ground that in the reported case there were two charter of demands. The number of charter of demands is inconsequential as the ratio of the decision is that where there is a settlement of a dispute in respect of a charter of demands the dispute ceased to exist. Thus, insofar as the workmen represented by the respondent no. 3 union are concerned, in view of the settlement of their dispute, their dispute ceased to exist and, thus, they are not necessary parties in the proceedings for adjudication of the dispute of the workmen who are members of the petitioner union and who have not entered into a settlement.

15. A necessary party is a party without whose presence a lis cannot be effectively and finally decided. A proper party is a party who must be directly or legally interested in the action, that is, if he can point out that the litigation would lead to a result which would affect him by curtailing his rights. The respondent no. 3 union is by no stretch of imagination either a necessary or a proper party to the reference pending before the Industrial Tribunal. It is true that the Order of impleadment of a party is a discretionary exercise of the power of the Court and the High Court would not normally interfere in the exercise of its writ

jurisdiction in the exercise of discretionary jurisdiction. However, since I have come to the conclusion that the respondent no. 3 union is neither a necessary nor a proper party, according to me, the exercise of discretion by the Industrial Tribunal is, therefore, an arbitrary exercise of discretion not warranted by the facts of the case. The Order of the learned Industrial Tribunal is, therefore, unsustainable both, on facts and on law, and deserves to be quashed and set aside.

16. In the result, therefore, the Writ Petition is allowed and the impugned Order of the Industrial Tribunal, dated 30th November 2000, is, hereby, quashed and set aside. Rule made absolute on the above terms with no order as to costs.

(P.V. HARDAS)
JUDGE.

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